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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1011, and 1046

[Docket No. AO–388–A8 et al.; DA–94–12]

Milk in the Carolina, Tennessee Valley, and Louisville-Lexington-Evansville Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

7 CFR part	Marketing area	AO Nos.
1005	Carolina	AO–388–A8
1011	Tennessee Valley ...	AO–251–A39
1046	Louisville-Lexington-Evansville.	AO–123–A66

SUMMARY: This final decision proposes to amend the pooling standards of the Tennessee Valley and Carolina orders; modifies the marketing areas of the Tennessee Valley and Louisville-Lexington-Evansville orders; changes the location adjustment under the Carolina order for plants located in the Middle Atlantic marketing area; and changes the base-paying months under the Carolina order. The decision is based upon industry proposals presented at a public hearing in Charlotte, North Carolina, on January 4, 1995.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The amended orders will promote more orderly marketing of milk by producers and regulated handlers.

These proposed amendments have been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior documents in this proceeding;

Notice of Hearing: Issued November 21, 1994; published November 25, 1994 (59 FR 60574).

Recommended Decision: Issued August 17, 1995; published August 24, 1995 (60 FR 43986).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Carolina, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), at Charlotte, North Carolina, on January 4, 1995. Notice of such hearing was issued on November 21, 1994, and published November 25, 1994 (59 FR 60574).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on August 17, 1995, issued a recommended decision containing notice of the opportunity to file written exceptions thereto. Two comments were received in response to the notice, both of which fully support the findings and conclusions of the recommended decision.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, with no material modifications.

The material issues on the record of the hearing relate to:

1. Marketing area modifications to the Tennessee Valley and Louisville-Lexington-Evansville orders;

2. Where to regulate a distributing plant that meets the pooling standards of more than one order;

3. Supply plant pooling standards under the Tennessee Valley order;

4. Distributing plant pooling standards under the Carolina order;

5. Location adjustments under the Carolina order; and

6. Base-paying months under the Carolina order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Marketing Area Modifications to the Tennessee Valley (Order 11) and Louisville-Lexington-Evansville (Order 46) Orders

Six now-unregulated Kentucky counties between the Order 11 and Order 46 marketing areas should be added to the Order 11 marketing area and one county that is now part of the Order 46 marketing area should be removed and added to the Order 11 marketing area.

A spokesman for Southern Belle Dairy Company, Inc., testified that the six unregulated counties—Clay, Jackson, Laurel, McCreary, Owsley, and Rockcastle—and the one Order 46

county—Pulaski—are in an area that is closely associated with the Tennessee Valley marketing area. He pointed out, for example, that two Order 11 pool plants—the Flav-O-Rich plant at London and the Southern Belle plant at Somerset—are in Laurel and Pulaski Counties, respectively.

The witness indicated that Southern Belle had sales in each of the counties proposed to be added to the marketing area. He also introduced data showing that 79 percent of the fluid milk sales in the seven-county area came from the Southern Belle and Flav-O-Rich plants. He said that a majority of the sales in Pulaski County also came from Order 11 plants.

There was no opposition to this proposal either at the hearing or in post-hearing briefs.

The six now-unregulated Kentucky counties should be added to the Order 11 marketing area and Pulaski County should be removed from the Order 46 marketing area and added to the Order 11 marketing area. This seven-county area is closely associated with the Tennessee Valley market and its addition to the Order 11 marketing area, in conjunction with the pooling standards adopted in this decision, will add regulatory stability for the plants with sales in this area. There are no plants in this seven-county area other than the Southern Belle and Flav-O-Rich plants and none outside of this area that would become regulated as a result of the addition of this territory to the Tennessee Valley marketing area.

A conforming change should be made in § 1011.52(a)(3) to include the counties of Jackson, Owsley, and Rockcastle with the other Kentucky counties now included in the minus 32-cent location adjustment zone. Although there are no plants located in these three counties, should a plant be built there the appropriate location adjustment should be minus 32 cents, the same location adjustment that is applicable in the neighboring counties of Laurel, Pulaski, Clay, and Breathitt.

2. Where To Regulate a Distributing Plant That Meets the Pooling Standards of More Than One Order

The pooling standards of the Tennessee Valley and Carolina orders should be modified to fully regulate a distributing plant that is located within their respective marketing areas and that meets the pooling standards of §§ 1011.7(a) or 1005.7(a), respectively, even if the plant meets the pooling standards of another order and has more route disposition in such other order's marketing area.

These amendments will allow a distributing plant at Kingsport, Tennessee, that is located within the Tennessee Valley marketing area and that meets all of the pooling standards of the Tennessee Valley order to be regulated under that order rather than under the Carolina order, despite the plant's having greater sales in the Carolina marketing area. Similarly, they will allow a distributing plant located at Somerset, Kentucky—which, as recommended under Issue No. 1, would be part of the Order 11 marketing area—to be regulated under Order 11 even if the plant should develop greater sales in the marketing area of Order 46 or some other order's marketing area. Finally, the amendments will permit a plant located at Greenville, South Carolina (in the Order 5 marketing area), to be regulated under Order 5 even if the plant has more sales in the Southeast marketing area (Order 7).

These amendments and the proposals which prompted them stem from various pricing problems under these orders that have come about for a variety of reasons, including the fact that the marketing areas may not have grown as fast as handlers' distribution areas. The pricing problems identified on the record of this proceeding relate to Land-O-Sun Dairies, Inc., at Kingsport, Tennessee; Southern Belle Dairy Company at Somerset, Kentucky; and Superbrand Dairy Products, Inc., at Greenville, South Carolina.

Land-O-Sun Dairies, Inc., operates a plant at Kingsport, Tennessee, which is in the Tennessee Valley marketing area. Because of this plant's greater route disposition in the Carolina marketing area, it has been regulated under that order. During the past three years (January 1992–November 1994), the blend price at Kingsport under Order 5 has averaged 14 cents below the blend price at that location under Order 11. In some months, the difference has been as high as 32 cents. Although the Class I price at Kingsport is identical under both of these orders, the Tennessee Valley order's higher Class I utilization—e.g., 82.03 percent for Order 11 compared to 77.96 percent for Order 5 during the first 10 months of 1994—has led to a higher blend price under that order at Kingsport during nearly every month for the past three years.

A spokesman for Land-O-Sun testified that the Kingsport plant handles approximately 12 million pounds of milk per month and that about one-third of its Class I sales are distributed on routes within the Tennessee Valley marketing area and the remaining two-thirds within the Carolina marketing area.

The witness testified that Land-O-Sun purchases its raw milk supply from 140 dairy farmers located in northeast Tennessee and southwest Virginia within 100 miles of the Kingsport plant. He noted that this area is also the supply area for other Order 11 pool plants. As a result, he said, any blend price difference to producers in this common supply area leads to market instability. Because the Order 11 blend price is higher than the Order 5 blend price, he stated, Land-O-Sun is forced to pay over-order prices to retain its producers. He indicated that Land-O-Sun could not consistently pay these higher prices and remain a viable business entity.

Southern Belle Dairy at Somerset, Kentucky, has been regulated under Order 11 since 1989. In recent years, the plant has had nearly equal sales in the Order 46 and Order 11 marketing areas. If regulation of the plant had shifted to Order 46, the applicable Class I differential price would be 19 cents lower than under Order 11 (i.e., $2.26 compared to $2.45), but the blend price difference would be even more substantial. For example, in the past 35 months (January 1992–November 1994), the Order 46 blend price averaged 30 cents below the Order 11 blend price at Somerset. In some months during this period, the difference in blend prices was as much as 67 cents.

At the hearing, a Southern Belle spokesman testified that the handler sought the marketing stability that would be provided by regulating the plant under Order 11 based upon its location within the Order 11 marketing area. The spokesman stated that Southern Belle would experience procurement problems if it could only pay its producers the Order 46 blend price in competition with Order 11 handlers—such as the Flav-O-Rich plant at London, Kentucky, 37 miles east of Somerset—which also procure milk from the same supply area. He also cited the marketing instability that would result from the plant shifting back and forth between the two orders, particularly in view of the differing base and excess payment plans to producers in each of these orders.

Superbrand Dairy Products at Greenville, South Carolina, has been regulated under the Georgia order since May 1992 despite the fact that it is located within the marketing area of the Carolina order and meets the pooling standards of that order.

A spokesman for Mid-America Dairymen, Inc. (Mid-Am), which has a full supply contract with the Superbrand plant, testified that the Carolina order should be amended to

provide the same type of pooling standard that has been proposed for the Tennessee Valley order and that was incorporated in the Department's recommended [and final] decisions for the new Southeast order.[1] Inclusion of this provision in each of these orders will provide regulatory compatibility throughout the Southeast, he said.

The witness stated that the Mid-Am proposal would return the Superbrand plant to its former status as a pool plant under Order 5. In terms of its sales and procurement pattern, the plant is more closely associated with the Carolina market, he added.

The Mid-Am spokesman testified that the proposed change in pooling standards is a departure from the traditional method of determining where a distributing plant should be regulated when it meets the pooling standards of more than one order. The traditional method, he explained, regulated a plant wherever it had the most sales. He said that the principle behind that practice was to insure that all handlers having sales in an order area were subject to the same regulatory provisions as their competition. However, he added, with the advent of large processing plants with sales distribution over wide geographic areas, the traditional method of pooling distributing plants has become obsolete.

There was no opposition to this proposal either at the hearing or in post-hearing briefs.

For the most part, Federal milk orders have traditionally regulated plants according to where they had the most sales. The reasoning behind that policy has been to ensure that all handlers having sales in a Federal order marketing area were subject to the same minimum prices (adjusted for plant location) and other regulatory provisions as their competition. When these provisions were first incorporated in orders, markets were primarily local in nature. At any given location, it was common for Class I prices to differ among orders, and it was common for each order to have a unique set of provisions.

Most of the provisions in Federal milk orders today are standardized. For example, all orders have uniform classification and allocation provisions. Similarly, most Federal order Class I prices are properly aligned. As noted above, for example, the Class I price at Kingsport, Tennessee, is the same whether Land-O-Sun's plant is regulated under Order 5 or Order 11; the Southern Belle plant at Somerset, Kentucky, would be subject to a higher Class I price under Order 11 than would apply at the plant under Order 46; and the Superbrand plant at Greenville would be subject to the same Class I price whether it was regulated under Order 5 or Order 7.

Consequently, it must be concluded that the competitive equity that was, and continues to be, sought by having competing handlers subject to the same rules and Class I prices can be achieved in these marketing areas by pooling distributing plants under the orders applicable to the marketing areas in which the plants are located. Specifically, the pooling standards of the Tennessee Valley and Carolina orders should be amended to fully regulate all distributing plants that meet the orders' pooling standards and that are located within their respective marketing areas.

Under the provisions adopted here for the Carolina and Tennessee Valley orders, a plant that qualifies as a pool distributing plant and which is located within the marketing area will be regulated under the order applicable to that marketing area even if it meets the pooling standards of another order and has greater sales in such other order's marketing area. The nearby Southeast order, Louisville-Lexington-Evansville order, and Upper Florida order contain provisions (§§ 1007.7(g)(4), 1046.7(e)(3), and 1006.7(d)(3), respectively) that conform to the proposed provisions by yielding regulation of such plants to the other order.

Orders 5 and 11 also should be modified to recognize another order's primacy to regulate a plant that meets such other order's pooling standards and that is within the other order's marketing area. This is accomplished in §§ 1005.7(e)(3) and 1011.7(e)(3).

A clarifying change should also be made to §§ 1005.7(e)(5) and 1011.7(e)(5). At present, these paragraphs, which are designated as §§ 1005.7(d)(4) and 1011.7(d)(4), state that ''the term pool plant shall not apply to a plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements for the month under another Federal order.'' A problem could arise with this language because during certain months of the year a supply plant may qualify as a pool plant by shipping less than 50 percent of its receipts to distributing plants. For example, if a supply plant shipped 40 percent of its receipts to pool distributing plants under Order 5 and 40 percent of its receipts to distributing plants under Order 11, both orders, pursuant to the language quoted above, would yield regulation of the plant to the other order, leaving the plant in a state of regulatory limbo. To prevent this unlikely event from occurring, the paragraph should be modified to read: ''The term pool plant shall not apply to a plant qualified pursuant to paragraph (b) of this section if the plant has automatic pooling status under another Federal order or if the plant meets the pooling requirements of another Federal order during the month and makes greater qualifying shipments to plants regulated under such other order than to plants regulated under this order.''

3. Supply Plant Pooling Standards Under the Tennessee Valley Order

The supply plant pooling provisions for the Tennessee Valley order should be amended to provide automatic pooling status for a supply plant which met the order's shipping standards during the preceding months of July through February.

Armour Food Ingredients Company (Armour) proposed the change in supply plant pooling standards. A spokesman for Armour testified that the company operates a supply plant at Springfield, Kentucky, that has been a pool plant under Order 11 since August 1992. He said that the facility is a ''dual Grade A/Grade B plant.'' The Grade A part of the plant is used to assemble Grade A milk from producers' farms for transshipment to pool distributing plants, while the Grade B facility is used to process surplus milk into Class III products, he explained.

The witness testified that Order 11 now requires Armour to ship milk to distributing plants every month of the year. However, much less milk is needed from Armour during the spring than during the other months of the year, he said. Consequently, he concluded, Armour and its distributing plant customers are incurring receiving and hauling costs for no other purpose than to satisfy the order's shipping requirements.

The witness introduced an exhibit which showed that from August 1992 through October 1994 Armour shipped a monthly average of 71 percent of its receipts to pool distributing plants. The exhibit also showed that when shipments of surplus milk from these same pool distributing plants to Armour were subtracted from the receipts from Armour, the distributing plants, on average, kept 34 percent of the milk that was sent to them.

There was no opposition to this proposal either at the hearing or in post-hearing briefs.

The provision proposed by Armour is included in many Federal milk orders

[1] Official notice is taken of the final decision for the Southeast order issued on May 3, 1995 (60 FR 25014).

because of the seasonal variation in milk production. This variation is also evident in the Tennessee Valley market. In 1993, the average daily production per producer in this market was 2,220 pounds. However, this daily average reached a low of 1,941 pounds during the month of July and peaked at 2,481 pounds during May. As a group, the months of March through June had a daily average of 2,375 pounds, compared to 2,149 pounds during the months of July through February.

There is no merit in requiring supply plants to receive, reload, and ship milk to distributing plants if the milk is not needed or if closer milk is available directly from producers' farms. In addition to the statistics suggesting that supply plant shipments during the months of March through June are unnecessary, the lack of any contradictory testimony from Order 11 distributing plant operators must be interpreted as concurrence with the view that supply plant shipments are simply not needed during the months of March through June. In view of this evidence, the proposal should be adopted.

Section 1011.7(b)(3) of the Tennessee Valley order, as proposed to be amended here, also should be modified to clarify what would happen if a shipping requirement were instituted during the months of March through June pursuant to § 1011.7(b)(4). First, it should be understood that a new supply plant or one that did not meet the order's shipping requirements during the months of July through February would be subject to the 40 percent supply plant shipping requirement now in the order.

If the market is short of milk during the ''free-ride'' months of March through June and the market administrator determines that additional milk is needed from pool supply plants pursuant to § 1011.7(b)(4), any increase in shipping percentage would be added to the percentage that is then applicable to the plant. For instance, if the market administrator determines that a 10-percentage point increase in shipments is needed, a plant that would have had to ship 40 percent of its receipts would be required to ship 50 percent. However, a plant in ''free-ride'' status, which normally would not have had to make any shipments, would have to ship 10 percent. The market administrator's ability to require additional milk from supply plants, even during the free-ride period of March through June, will help to ensure that the market has adequate supplies of milk for fluid use during all months of the year.

At the present time, §§ 1005.7(b) and 1011.7(b) of the Carolina and Tennessee Valley orders, respectively, authorize the Director of the Dairy Division to adjust supply plant shipping standards to obtain needed shipments of milk or to prevent uneconomic shipments. This provision was not an issue at the hearing. However, in conjunction with the other changes in pooling provisions that were adopted, the recommended decision stated that authority to adjust supply plant shipping standards should be given to the market administrator of Orders 5 and 11. Although interested parties were invited to comment on this, as on other recommendations, no comments were received in opposition to this suggestion.

With all of the marketing information immediately available to him or her, the market administrator is in an ideal position to sense the changing needs of the market and to obtain industry views concerning the desirability of adjusting supply plant shipping requirements. As a result, the market administrator will be able to attend to the need for such temporary revisions in a timely fashion and will be able to better serve the changing needs of handlers and producers under the Carolina and Tennessee Valley orders.

A similar conforming change also should be made in § 1011.13(e)(3) of the Tennessee Valley order for the same reasons. This change will allow the market administrator to increase or decrease, by 10 percentage points, the diversion limitations applicable to a proprietary bulk tank handler.

4. Distributing Plant Pooling Standards Under the Carolina Order

Proposals to amend the Order 5 in-area route disposition requirement for pool distributing plants should not be adopted.

At the present time, a distributing plant must dispose of at least 60 percent of its fluid milk product receipts in Class I during the months of August through November, January, and February and at least 40 percent in each of the other months to qualify as a pool plant under Order 5. In addition, at least 15 percent of the plant's route disposition must be in the marketing area.

Milkco, Inc., testified in support of its proposal to change the in-area route disposition standard of Order 5 from 15 percent to 10 percent. At the hearing, Milkco modified its proposal to the lesser of 1500 pounds daily or 10 percent of a plant's fluid milk receipts sold as Class I.

A witness representing Milkco, Carolina Dairies, Hunter Farms, Inc., Dairy Fresh, Inc., and Pine State Creamery testified that the original proposal had been modified to include language similar to that contained in the recommended decision of the proposed Southeast Federal order.

The witness testified that the reason for proposing a change in the in-area route disposition requirement was that partially regulated handlers were constantly increasing their Class I distribution into the Order 5 marketing area. He estimated that the average distribution for 1994 was between 25 million and 35 million pounds. He claimed that this distribution is attributed to sales from partially regulated plants located in Virginia.

The witness explained that the Virginia State Milk Commission prices Class I sales made outside the State of Virginia at the Federal order Class II price. He said that this creates a problem of accountability for those Class I sales moving from Virginia to another state. He claimed that the possibility exists that, in some instances, not all of those sales may be accounted for and paid for at the appropriate price.

The witness stated that the proposed amendment would provide uniformity between Order 5 and surrounding orders. He also claimed that the proposed change would not be burdensome to handlers located in Virginia if these handlers are already paying prices equivalent to, or greater than, the Order 5 Class I price.

The general manager for Carolina Virginia Milk Producers Association (CVMPA) also testified in support of the revised proposal. He stated that the proposal would provide uniformity between Order 5 and neighboring orders and that it would eliminate potential inequities between Order 5 handlers and handlers regulated by the Virginia Milk Commission.

The CVMPA representative asserted that the proposal would regulate some partially regulated plants that may be subject to a lower price for milk used in fluid milk products than fully regulated plants under Order 5. He explained that handlers regulated under Order 5 must pay at least the minimum Federal order class prices for their milk. He claimed that plants located in Virginia and regulated by the Virginia Milk Commission have a competitive advantage on raw milk costs compared to handlers fully regulated under Order 5. The witness indicated that the Class I price established and regulated by the Virginia Milk Commission has historically been higher than the Order 5 price but that the Commission

requires that only the Class II price be paid for sales out of the State.

The CVMPA witness testified that sales from partially regulated handlers located in Virginia into the Carolina marketing area have a significant impact on the market. Since January 1992, he pointed out, sales from these plants have ranged from one to three million pounds of Class I sales or between .84 and 2.26 percent of total route disposition in Order 5. He said that while these Class I sales from Virginia partially regulated plants are confined to a small portion of the marketing area, they have had a disruptive effect on the market in eastern North Carolina.

The CVMPA representative testified that Federal orders contiguous to the Carolina marketing area have more restrictive pool plant requirements than the Carolina order. He noted that the Tennessee Valley order's in-area route disposition requirement was 10 percent and that the recommended Southeast order would fully regulate handlers if a plant distributed either 10 percent of its total fluid milk receipts or at least 1500 pounds of Class I sales per day in the marketing area. Such requirements are appropriate for orders with relatively high Class I utilization, he said.

Maryland & Virginia Milk Producers Cooperative Association, Inc. (MVMPCA), proposed a change to the Order 5 in-area route disposition requirement that would have exactly the opposite effect of Milkco's proposal. The MVMPCA proposal would base the in-area requirement on 15 percent of ''dairy farmer receipts'' rather than 15 percent of ''total route disposition.'' Because dairy farmer receipts would be larger than total route disposition, the proposal would have the effect of making it more difficult to qualify for full regulation under Order 5.

A spokesman for MVMPCA testified that the proposed change would amend the Order 5 provision to conform more closely with the provisions of the Middle Atlantic order (Order 4). He said that these definitions should be more closely aligned to allow distributing plants in the Commonwealth of Virginia, which are partially regulated under both Orders 4 and 5, to be subject to the same in-area route distribution standard under either Federal order.

Without alignment of these provisions, he said, there could be results which are neither intended nor orderly. For instance, he stated, a plant could have more route sales in Order 4 but become fully regulated under Order 5.

The witness stated that there are currently three dairies partially regulated in both Orders 4 and 5: Richfood at Richmond, Virginia; Land-O-Sun Dairies, Inc., at Portsmouth, Virginia; and Marva Maid Dairy at Newport News, Virginia. He said that these Virginia plants are the only partially regulated distributing plants subject to Order 5 other than the several plants which distribute long-shelf-life fluid milk products in a broad geographic area over most of the United States. Consequently, he concluded, the MVMPCA proposal would not have a substantial impact upon any other plants.

A witness representing Richfood Dairy, Inc. (Richfood), Richmond, Virginia, testified in opposition to Milkco's proposal to reduce the Order 5 in-area route disposition requirement and in support of Richfood's proposal to increase the requirement from 15 percent to 20 percent.

The witness stated that Richfood has about 83 percent of its fluid milk product sales in that part of Virginia that is outside the Middle Atlantic (Order 4) marketing area. The plant has approximately 12 percent of its sales in the Carolina marketing area, 4 percent in the Order 4 marketing area, and the remaining 1 or 2 percent in the Ohio Valley marketing area. Richfood's sales into the Carolina marketing area account for about 1 percent of the market's total in-area sales, according to the witness.

The Richfood witness stated that Richfood primarily has fluid milk sales in the eastern Virginia market with some in the western Virginia market. During October 1994, the witness noted, the eastern and western markets' Class I prices were $16.29 and $16.02, respectively. He said that these Virginia prices, based on the way in which Federal order Class I prices are set, would represent October Class I differentials of $4.56 for the eastern market and $4.29 for the western market. Federal order Class I differentials of this magnitude, he emphasized, are not even found in Miami, the highest priced location under the Federal order system. These facts, he claimed, show that purchasers of raw milk in Virginia do not have an unfair competitive advantage over handlers regulated under a Federal order. He concluded that a plant with 10 percent of its sales in the Carolina marketing area and 80 percent in Virginia should not be forced to be fully regulated under Order 5.

The administrator of the Virginia State Milk Commission (the Commission) testified in opposition to Milkco's original proposal. The administrator stated that pooling Virginia plants that have less than 15 percent of their total sales in a Federal order marketing area would be disruptive to the Commission's ability to price and pool milk in the Virginia marketing areas. He argued that there are less intrusive ways to accomplish class price integrity for pooling producer milk.

The witness stated that the Commission was willing to assist the Department to ensure proper reporting and pricing within Federal milk marketing areas to alleviate the concerns of those who have doubts that Virginia's out-of-area prices are being enforced. The witness explained that the Commission has the ability to report sales by Virginia plants into Federal orders in a timely and accurate manner, and is willing to provide such information to the appropriate Federal order market administrator to help enforce proper pricing.

Neither Milkco's proposal, which would make it easier to fully regulate an out-of-area plant, nor MVMPCA's or Richfood's proposal, which would make it harder to fully regulate an out-of-area plant, should be adopted.

Proponents of Milkco's proposal argued that the amount of sales into the Carolina marketing area from partially regulated plants located in Virginia is constantly increasing due to the presence of these plants. Record evidence does not support this argument. For instance, route disposition in Order 5 by partially regulated plants during the months of July through October 1994 was lower than for the same period of 1993. In addition, statistics show that in-area route disposition into Order 5 from partially regulated plants located in Virginia have been at a relatively constant level over the past two years. For example, in 1993 and 1994, the average share of total Order 5 Class I route disposition from these plants was 2.05 and 1.95 percent, respectively.

No evidence presented at the hearing supported the arguments advanced by Milkco and CVMPA concerning the alleged competitive advantage that partially regulated plants in Virginia have in the Carolina marketing area. The record is devoid of any data to support this claim.

With respect to proponents' arguments that changes in Order 5 would bring this order into conformance with the Middle Atlantic order or the Southeast order, marketing conditions in the Carolina order do not warrant any change to the in-area route disposition requirement for this reason. Moreover, it is not clear why differences in the in-area route disposition requirements of these orders would matter in most circumstances. The only area where this

issue seems to be particularly acute is in Virginia. Even in Virginia, however, there is an insufficient basis to conclude that any competitive advantage exists that would warrant undermining of the Virginia State Milk Commission regulation.

The in-area route disposition requirement is a locally tailored standard that indicates when a plant is sufficiently associated with a market to warrant full regulation under the order regulating that marketing area. Whether the standard should be 10 percent or 15 percent depends upon particular circumstances in that area and the demonstrated need for one standard or the other. Based on the testimony and data in this hearing record, the present 15 percent in-area route disposition requirement under Order 5 should remain unchanged.

MVMPCA submitted comments in support of the findings and conclusions of the recommended decision regarding the Order 5 in-area route disposition requirement.

5. Location Adjustments Under the Carolina Order

The location adjustment under the Carolina order for a location within the Middle Atlantic Federal order marketing area should be determined by subtracting the Order 4 Class I price at that location from the base zone Class I price specified in Order 5.

At the present time, the Order 5 location adjustment for a plant located in the State of Maryland is based upon the shortest hard-surfaced highway distance, as determined by the market administrator, that such plant is from Greensboro, North Carolina. Once that distance is determined, it is broken down into 10-mile increments (except for the last increment, which may be smaller than 10 miles), which are then multiplied by 2.5 cents to determine the location adjustment. Thus, for example, the location adjustment for a plant that is located 295 miles from Greensboro would be 75 cents (i.e., $30 \times 2.5 = .75$).

Maryland and Virginia Milk Producers Cooperative Association proposed a change in the location adjustment applicable to its butter/powder plant at Laurel, Maryland. Initially, the cooperative proposed treating the Laurel plant as if it were within the State of Virginia; this would result in a zero location adjustment at Laurel. However, at the hearing a spokesman for the cooperative stated that it would support an alternative proposal that would subtract the Order 4 Class I differential price at Laurel (i.e., $3.03) from the Order 5 Class I price at Greensboro (i.e., $3.08), which results in a location adjustment of minus 5 cents. The witness stated that ''our only caveat to this pricing formula is that the Order 5 language should be amended so that the price at Strasburg, Virginia, is established on the same basis as the price at Laurel, Maryland.''

The cooperative's spokesman testified that MVMPCA supplies the Kroger Westover Dairy Order 5 pool distributing plant at Lynchburg, Virginia, on a year-round basis. In addition, he said that since 1992 the cooperative has supplied supplemental milk to nine other Order 5 distributing plants on a seasonal basis.

The witness said that MVMPCA has served as a seasonal balancing agent in supplying Order 5 plants. He introduced an exhibit showing that MVMPCA's monthly sales to Order 5 plants reach a peak during the short production months of July through October.

The witness stated that when producers' milk is not needed by Order 5 plants, it is diverted to MVMPCA's butter-powder plant at Laurel, which serves as a major balancing plant for the Middle Atlantic region. The witness also noted that there is another balancing facility for Order 5 surplus milk—the Valley Milk butter/powder plant located at Strasburg, Virginia—which is approximately 80 miles west of Laurel and outside of any Federal order marketing area. He said that Order 5 now prices milk in an inequitable manner by providing a base zone uniform price for milk that is diverted to Strasburg, but a minus 75-cent location adjustment for milk that is diverted to Laurel.

There was no opposition to this proposal either at the hearing or in the post-hearing briefs that were filed.

MVMPCA's argument and alternative proposal for pricing milk at Laurel is persuasive and should be adopted. The location adjustment at Laurel clearly should not be minus 75 cents. It should be minus 5 cents, the difference between the Order 5 base zone Class I price and the Order 4 Class I price at Laurel.

The appropriate Federal order Class I price at Laurel, Maryland, is the price established for that location under the Middle Atlantic Federal order, which encompasses Laurel. Thus, if a distributing plant located at Laurel were to become regulated under Order 5, its Class I price would be the same as the price that would apply under Order 4. This would ensure competitive pricing among competing handlers. Determining location adjustments for plants in this manner helps to assure the proper alignment of Class I prices throughout the Federal order system and to minimize procurement problems for plants that are located in one Federal order marketing area but regulated under a different order.

The evidence introduced by MVMPCA shows that its producers supplying the Order 5 market are located as far south as the Virginia/North Carolina border and as far north as Cumberland County, Maryland. The exhibit, for example, shows that MVMPCA has producers in Halifax County, Virginia, just north of the Order 5 base zone. When producer milk from Halifax is delivered to a distributing plant at Lynchburg or to a North Carolina handler in the base zone, the milk is priced at the base zone price. Yet, under present order provisions, if the milk is not needed for fluid use by an Order 5 distributing plant and must be diverted to MVMPCA's butter-powder plant at Laurel, 247 miles away, it receives 75 cents less than the base zone price. Consequently, not only does MVMPCA receive a much lower price for this milk, it also absorbs the hauling cost to get the milk to Laurel.

A location adjustment of minus 5 cents at Laurel will narrow the difference to 5 cents between the Laurel and Strasburg plants. This adjustment should alleviate the inequity that now exists in pricing between the two plants. To further reduce the difference in price by imposing a minus 5-cent location adjustment at Strasburg, as suggested by MVMPCA, would entail changing location adjustments throughout the State of Virginia, which goes beyond the scope of the hearing proposals.

MVMPCA filed comments supporting the Order 5 proposed location adjustment change.

6. Base-Paying Months Under the Carolina Order

Maryland & Virginia Milk Producers Cooperative Association, Inc., originally submitted a proposal to delete the month of June from the base-paying period of the Order 5 base and excess payment plan. At the hearing, however, the cooperative modified its proposal to add the month of February as well as delete the month of June. As modified, the base-paying months would be February through May.

The MVMPCA witness stated that the purpose of the base-excess plan is to provide producers with an incentive to level their production on a seasonal basis. He indicated that the plan encourages production during the months when milk is needed for fluid use and discourages production during flush production months. Under current marketing conditions, he contended, June is not a surplus month but a month

when supplemental supplies are frequently needed by Order 5 distributing plants. Likewise, he asserted that February is a month of substantial surplus production and should be added to the base-paying period rather than remain a base neutral month.

During 1992 and 1993, the MVMPCA witness noted, daily average production per Order 5 producer from May to June declined about 8 percent, from 4,259 pounds per day to 3,978, and from 4,424 to 4,076, respectively. However, he indicated that daily average production in Order 5 in February 1993 of 4,684 pounds was the highest production month of the year, and production in February 1992 was the third highest month.

The witness also testified that a collateral consequence of including June as a base-paying month is that when supplemental supplies are needed under Order 5, unnecessary and inefficient movements of milk are required to avoid the penalty of absorbing the excess price for supplies of milk that are required for the market's Class I needs. The witness explained that when supplemental milk is needed during the month of June, MVMPCA avoids the penalty of receiving only the excess price for milk delivered directly from producers' farms by instead delivering plant milk from its Laurel plant. To do this, however, the cooperative must receive the milk at Laurel, reload it onto a tank truck, and ship it to an Order 5 distributing plant. He said that the modified proposal would eliminate unnecessary and inefficient movements of milk for the sole purpose of avoiding the order's excess price.

There was no opposition to this proposal either at the hearing or in post-hearing briefs.

The modified proposal to change the base-paying period from March through June to February through May should be adopted. The removal of June and the addition of February to the base-paying period will bring the base-paying months into closer conformity with the Class I needs of the market.

For the past three years, the average Class I utilization in January has been 77.8 percent while the June Class I utilization has averaged 79.8 percent for this same time period. By comparison, the average Class I utilization for the months of February through May has been 75.6, 75.7, 73.9, and 75.1 percent, respectively. The record also shows that June is a month in which supplemental supplies of milk are needed to meet the Class I needs of the market.

On the basis of the statistical data and the testimony presented at the hearing, the month of February should be included in the base-paying period and June deleted to change the base-paying period to February through May. These changes should result in a base and excess plan that better serves the needs of the market and that will avoid the unnecessary and inefficient movements of needed supplemental milk described by MVMPCA.

Several conforming changes in order language have been made in response to the addition of February and the removal of June as a base-paying month. In § 1005.32(a), dealing with ''other reports,'' the words ''March through June'' should be changed to ''February through May''. In the introductory text of § 1005.61(a) and in § 1005.61(a)(5), the words ''July through February'' must be changed to ''June through January'', and in § 1005.61(b) the words ''March through June'' must be changed to ''February through May''. In §§ 1005.90, 1005.91, and 1005.93(b) the words ''March through June'' must be changed to ''February through May'', and the words ''February 1'' in § 1005.93(b) and § 1005.94 should be changed to ''January 1'' to maintain the existing relationship between the start of the base-paying period and the time when transfers must be completed without the imposition of conditions concerning the receipt or transfer of additional base. Finally, ''March 1'' should be changed to ''February 1'' in § 1005.93(e).

MVMPCA submitted comments in support of the proposed modifications to the Order 5 base-excess plan.

Motion for a New Hearing

Purity Dairy and Fleming Dairy, both of Nashville, Tennessee, argued that the remedies proposed at this hearing were not sufficient to address some major problems. They maintain that while the proposed amendments would temporarily correct some problems, in the long run these remedies would only make the problems worse. They urged the Secretary to hold a new hearing to consider a merger of Orders 5, 11, and 46 or the merger of Orders 5 and 11 with the proposed Southeast marketing area.

A major study of Orders 5, 11, and 46 and other marketing areas is currently underway at Cornell University. One of the purposes of this study is to develop recommendations for a merged order in this area.

There have been several major changes in cooperative representation, supply arrangements, and plant ownership in these markets. Milk has been shifting among the markets. The alleged problem in south central Kentucky of misaligned uniform prices causing Purity and Fleming to be at a competitive disadvantage for milk supplies has been corrected by the association of additional milk with Order 11, which has lowered that order's Class I utilization. There is no point in considering a merger of orders in this area until such time as producers and handlers propose such a merger. For all of these reasons, the motion to hold a new hearing is denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held; and

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreements and the orders as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Rulings on Exceptions

No exceptions were received in opposition to the proposed amendments set forth in the recommended decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the Carolina, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

August 1995 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid marketing areas is approved or favored by producers, as defined under the terms of the individual orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1005, 1011, and 1046

Milk marketing orders.

Dated: December 4, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Orders Regulating the Handling of Milk in the Carolina, Tennessee Valley, and Louisville-Lexington-Evansville Marketing Areas

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held; and

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in each of the specified orders' marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and orders amending each of the specified orders contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on August 17, 1995, and published in the Federal Register on August 24, 1995 (60 FR 43986), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

1. The authority citation for 7 CFR parts 1005, 1011, and 1046 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 1005.7, the reference ''(d)'' in the introductory text is revised to read ''(e)'', in paragraph (b) the words ''Director of the Dairy Division'' and ''Director'' are revised to read ''market administrator'' wherever they appear, paragraph (d) is redesignated as paragraph (e) and revised, and a new paragraph (d) is added to read as follows:

§ 1005.7 Pool plant.

* * * * *

(d) A plant located within the marketing area (other than a producer-handler plant or a governmental agency plant) that meets the qualifications described in paragraph (a) of this section regardless of its quantity of route disposition in any other Federal order marketing area.

(e) The term ''pool plant'' shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant with route disposition in this marketing area that is located within the marketing area of another Federal order and that is fully regulated under such order;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area but which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area; and

(5) A plant qualified pursuant to paragraph (b) of this section if the plant has automatic pooling status under another Federal order or if the plant meets the pooling requirements of another Federal order during the month and makes greater qualifying shipments to plants regulated under such other order than to plants regulated under this order.

§ 1005.32 [Amended]

3. In § 1005.32(a), the words ''March through June'' are revised to read ''February through May'' wherever they appear.

4. In § 1005.53, paragraph (a)(6) is redesignated as paragraph (a)(7) and revised, and a new paragraph (a)(6) is added to read as follows:

§ 1005.53 Plant location adjustments for handlers.

(a) * * *

(6) For a plant located within the Middle Atlantic Federal Order Marketing Area (part 1004), the adjustment shall be computed by subtracting the base zone Class I price specified in § 1005.50(a) from the Class I price applicable at such plant under the Middle Atlantic Federal Order; and

(7) For a plant located outside the areas specified in paragraphs (a)(1) through (a)(6) of this section, the adjustment shall be a minus 2.5 cents for each 10 miles or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Greenville, South Carolina, or Charlotte or Greensboro, North Carolina.

§ 1005.61 [Amended]

5. In § 1005.61 paragraphs (a) introductory text and (a)(5), the words ''July through February'' are revised to read ''June through January'' and in paragraph (b) introductory text the words ''March through June'' are revised to read ''February through May''.

§§ 1005.90 and 1005.91 [Amended]

6. In §§ 1005.90 and 1005.91, the words ''March through June'' are revised to read ''February through May'' wherever they appear.

§ 1005.93 [Amended]

7. In § 1005.93 paragraph (b), the words ''March through June'' are revised to read ''February through May'' wherever they appear, the words ''February 1'' are revised to read ''January 1'', and in paragraph (e) the words ''March 1'' are revised to read ''February 1''.

§ 1005.94 [Amended]

8. In § 1005.94, the words ''February 1'' are revised to read ''January 1''.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

9. Section 1011.2 is amended by revising paragraph (b) to read as follows:

§ 1011.2 Tennessee Valley marketing area

* * * * *

(b) In Kentucky, the counties of Bell, Breathitt, Clay, Harlan, Jackson, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Owsley, Perry, Pulaski, Rockcastle, and Whitley.

* * * * *

10. In § 1011.7, the reference ''(d)'' in the introductory text is revised to read ''(e)'', paragraph (b) is revised, paragraph (d) is redesignated as paragraph (e) and revised, and a new paragraph (d) is added to read as follows:

§ 1011.7 Pool plant.

* * * * *

(b) A plant, other than a plant described in paragraph (a) of this section, from which fluid milk products, except filled milk, are shipped to plants described in paragraph (a) of this section subject to the following additional conditions:

(1) During the months of August through November, January and February, such shipments must equal not less than 60 percent (40 percent during the months of December and March through July) of the total quantity of milk approved by a duly constituted regulatory agency for fluid consumption that is received during the month at such plant from handlers described in § 1011.9 (c) and (d) and from dairy farmers, including milk that is diverted from the plant pursuant to § 1011.13 but excluding milk diverted to the plant;

(2) The operator of a plant described in this paragraph may include milk diverted from the plant to plants described in paragraph (a) of this section for up to one-half of the shipments required pursuant to this paragraph;

(3) A plant which meets the shipping requirements specified in this paragraph during the months of July through February shall be a pool plant during the following months of March through June unless the milk received at the plant does not continue to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (b)(4) of this section, or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated a nonpool plant for such month and for each subsequent month through June during which it would not otherwise qualify as a pool plant; and

(4) The shipping requirements described in paragraph (b)(1) and (b)(3) of this section may be increased or decreased up to 10 percentage points by the market administrator if he or she finds that revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either at his or her own initiative or at the request of interested persons. If the investigation shows that a revision may be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

* * * * *

(d) A plant located within the marketing area (other than a producer-handler plant or a governmental agency plant) that meets the qualifications described in paragraph (a) of this section regardless of its quantity of route disposition in any other Federal order marketing area.

(e) The term ''pool plant'' shall not apply to the following plants:

(1) A producer-handler plant;

(2) A governmental agency plant;

(3) A plant with route disposition in this marketing area that is located within the marketing area of another Federal order and that is fully regulated under such order;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area but which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area; and

(5) A plant qualified pursuant to paragraph (b) of this section if the plant has automatic pooling status under another Federal order or if the plant meets the pooling requirements of another Federal order during the month and makes greater qualifying shipments to plants regulated under such other order than to plants regulated under this order.

§ 1011.13 [Amended]

11. In § 1011.13 paragraph (e)(3), the words ''Director of the Dairy Division'' and ''Director'' are revised to read ''market administrator'' wherever they appear.

12. Section 1011.52(a)(3) is revised to read as follows:

§ 1011.52 Plant location adjustments for handlers.

(a) * * *

(3) For such milk which is physically received at a plant located within the Kentucky counties of Bell, Breathitt, Clay, Harlan, Jackson, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Owsley, Perry, Pulaski, Rockcastle, and

Whitley, the Class I price shall be decreased by 32 cents; and

* * * * *

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

§ 1046.2 [Amended]

13. In § 1046.2, in the list of Kentucky counties, the word ''Pulaski'' is removed.

[Note: The following appendix will not be published in the Code of Federal Regulations.]

Appendix—Marketing Agreement Regulating the Handling of Milk in Certain Specified Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ _____[1] to _____, all inclusive, of the order regulating the handling of milk in the said marketing areas (7 CFR part _____[2]) which is annexed hereto; and

II. The following provisions:

§ _____[3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____[4], _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ _____[3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[1] First and last sections of order.

[2] Appropriate Part number.

[3] Next consecutive section number.

[4] Appropriate representative period for the order.

[FR Doc. 95–30670 Filed 12–15–95; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RuleNet Communication Program; Fire Protection Regulations—Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: RuleNet announcement; Correction.

SUMMARY: This document corrects a notice of availability appearing in the Federal Register on November 15, 1995 (60 FR 57370), that listed the electronic address for accessing the RuleNet program. This action is necessary to correct a printing error in the RuleNet address.

FOR FURTHER INFORMATION CONTACT: Francis Cameron, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1642.

On page 57370, under the **ADDRESSES** heading, in the fifth line, the electronic address that reads ''http:/nssc.llnl.gov/RuleNet'' should read ''http://nssc.llnl.gov/RuleNet.''

Dated at Rockville, Maryland, this 13th day of December, 1995.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules Review Section, Rules Review and Directives Branch.

[FR Doc. 95–30666 Filed 12–15–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–88–AD]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Lockheed Model L–1011–385 series airplanes, that currently requires inspections to detect cracking of certain areas of the rear spar caps, web, skin, and certain fastener holes; and repair or modification, if necessary. That AD was prompted by reports of fatigue cracks in the caps of the wing rear spar inboard of inner wing station 346. The actions specified by that AD are intended to prevent rupture of the rear spar, which could result in extensive damage to the wing and fuel spillage. This action would add various improved inspections and follow-on actions, and would require that the initial inspections be accomplished at reduced thresholds.

DATES: Comments must be received by February 13, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.